IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16969 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASWANTSINH DHIRABAWA SANGLOD - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
MR VC VAGHELA for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/06/2006

ORAL JUDGMENT

1. The petitioner herein has challenged the continued nomination of respondents no.2 to 4 in the society called Shri Parbhat Co.Operative

Agricultural Produce Processing and Marketing Society Limited. The petitioner is a Director in the said society. The respondents no. 2 to 4 are the members nominated by the State Government in exercise of powers under section 80(1) of Gujarat Cooperative Societies Act (hereinafter referred to as “the said Act”). The respondents no. 2 to 4 were nominated by the State Government under an order dated 6-10-1999. Order at Annexure-A clearly stipulates that such nomination is till further orders. It is on the basis of this order that respondents no. 2 to 4 continued to enjoy their nominations in the Committee of the Society. It is not in dispute that different Committees of society were reconstituted upon expiry of their respective terms after the State Government passed the said order dated 6-10-1999.

2. On the basis of above factual background, learned advocate for the petitioner Shri Patel submitted that the nomination of respondents no. 2 to 4 is bad in law and in any case

continuation of such nomination is not legally sustainable. He submitted that the State Government has no power under sub-section(1) of Section 80 of the said Act to make such nominations since the State Government has not subscribed to the share capital of the Society directly or through another society nor has the State Government guaranteed the repayment of the principal or payment of the interest on debentures issued or loans raised by the Society. He therefore, submitted that necessary conditions to exercise power under sub-section(1) of Section 80 of the said Act, in the present case are not fulfilled. More significantly, he contended that in any case, the nomination of the private respondents would be co-terminus with the life of the Committees on which they were nominated. In this regard, reliance is placed on decision of the Division Bench of this Court in the case of G.S.M.C.F. v/s. State of Gujarat and ors. reported in 2005(1) GLH 144.

3. Learned advocate Shri Vaghela for the private respondents submitted that the State Government had necessary powers to make the nominations. He submitted that the assertion of the petitioner that the State has no financial stakes in the Cooperative Society, is not correct. He further submitted that upon constitution of the new Committees of the Society once again a resolution was passed on 19-3-2005 by which the nomination the nominations of respondents no. 2 to 4 were accepted by the Society. He therefore, opposed the petition.

4. Learned AGP Shri Gori submitted that the Court had passed order at the relevant time and the Government would continue to enjoy exercising the power to make fresh nominations, if found necessary.

5. Having heard the learned advocates appearing for the parties, it is clear that though initially by an order dated 6-10-1999, the respondents no. 2 to 4 came to be nominated by the State

Government in exercise of powers under section 80(1) of the said Act in the said Cooperative Society and that such nomination was effective until further orders, such nominations cannot continue beyond the term of the Committee as held by the Division Bench of this Court in the case of G.S.M.C.F. v/s. State of Gujarat and ors.(supra) Admittedly, the terms of the Committee had come to an end and fresh committee had been constituted since the Government made nominations.

6. In that view of the matter, continued presence of respondents no. 2 to 4 as nominated members in the Committee of the Cooperative Society concerned is not legal, their continuation therefore, is quashed. I have expressed no opinion on the power of the Government to make such nominations in the society either under sub-section(2) or under sub-section(1) of section 80 of the said Act.

7. Subject to above observations, the petition is

allowed. Rule made absolute accordingly with no order as to costs.

(Akil Kureshi,J.)

(raghu)